

South Dakota

Tribal Police Chief Confirms VP Arrest

BY KRISTI EATON
Associated Press

SIoux FALLS — The chief of police of an American Indian tribe that is suing some of the world's largest beer makers for contributing to rampant alcoholism confirmed Friday that the tribe's vice president was arrested in an alcohol-related incident.

Oglala Sioux Vice President Thomas Poor Bear was arrested Feb. 19 on the Pine Ridge Reservation on a charge of obstructing government function while receiving treatment at a hospital, according to a portion of a police report The Associated Press obtained from a reservation resident who had access due to his ties with the tribal government.

The arresting officer noted in the report that Poor Bear had "the odor of intoxicants on his breath" and bloodshot eyes. His blood-alcohol content was listed at .306, nearly quadruple the legal limit for driving a car.

Poor Bear told AP he had not been drinking and that his arrest and subsequent jailing was related to driving without a license.

Oglala Sioux Police Chief Richard Greenwald confirmed Friday that Poor Bear's arrest

was related to alcohol.

"I think he was arrested for liquor violation and impeding an officer, but of course, like anything else, he's innocent until proven guilty in a court of law," Greenwald said. He said the liquor violation either means Poor Bear was in possession of alcohol or had been consuming alcohol. Both are banned on the reservation.

Greenwald would not go into specifics and said the arresting officer could not comment. He refused to provide the full report because the tribe's laws do not allow for the release of police reports until cases have gone through court.

The copy of the report obtained by AP shows Poor Bear was arrested on a charge of obstructing a government function and notes that alcohol was a factor in the arrest. Poor Bear said he was arraigned three days later on the obstruction charge.

A secretary to the tribe's president, John Yellow Bird Steele, said he was not available to comment.

The Oglala Sioux Tribe has sued several beer makers, saying they are knowingly contributing to the devastating alcohol-related

problems on the Pine Ridge Reservation. The lawsuit, filed last month in the U.S. District Court of Nebraska, seeks \$500 million in damages for the cost of health care, social services and child rehabilitation caused by chronic alcoholism on the reservation, located in some of the poorest counties in the country.

The lawsuit also targets four beer stores in Whiteclay, Neb., a town near the reservation's border. Whiteclay has only about a dozen residents but sold nearly 5 million cans of beer in 2010, according to the federal lawsuit.

Poor Bear has been outspoken in his criticism of the Whiteclay beer stores for providing alcohol to tribal members.

Attorney Tom White, legal counsel for the Oglala Sioux Tribe in the federal lawsuit, was traveling and could not immediately be reached for comment Friday.

Mark Vasina, president of Nebraskans for Peace, which assisted Poor Bear in bringing the lawsuit against the beer companies, said he had no comment.

Nebraska

Court: Tax Flavored Malt Beverages As Liquor

BY GRANT SCHULTE
Associated Press

LINCOLN, Neb. — The Nebraska Supreme Court ruled Friday that sweetened malt beverages known as "alcopops" should be taxed as hard liquor instead of beer.

The ruling means the state can tax malt beverages such as Mike's Hard Lemonade and Smirnoff Ice at \$3.75 per gallon, instead of the 31-cent-per-gallon tax imposed on beer, and could force beer-only stores to stop selling such drinks.

But lawmakers are expected to debate a bill this week that would effectively undo Friday's decision, allowing the drinks to again be taxed as beer.

Critics say the beverages are aimed at young customers because of their sweet taste. The Nebraska Liquor Control Commission classified brewed malt beverages as beer in 2006, to

align the state's alcoholic beverage policies with federal rules.

The ruling answered a 2009 lawsuit filed by a mother and three Nebraska groups that fight underage drinking. The groups argued that the state commission ruling conflicts with Nebraska law — enacted right after Prohibition — that bans the mixture of hard liquor and beer. Nebraska is the only state with such a ban.

One of the groups, Project Extra Mile, contends the beer classification helped make the drinks popular with underage drinkers by keeping them on more store shelves and at lower prices. Assuming the higher taxes are passed along to consumers, the hard-liquor classification would significantly raise shelf prices.

The court said the commission exceeded its authority when it classified the beverages as beer, but acknowledged that the Legislature could change the definition.

"The Nebraska Liquor Control Commission plainly defines spirits as beverages that contain alcohol obtained by distillation," the court wrote in its opinion. "Up to 49 percent of the alcohol in flavored malt beverages is distilled alcohol. Therefore, a flavored malt beverage is a spirit."

The Nebraska Attorney General's office argued that flavored malt beverages meet the definition of beer under state law. The attorney general's office also questioned whether the mother and three groups had standing to bring the lawsuit because the classification of the drinks had no direct effect on them.

The group's attorney, Vince Powers, said taxing the malt beverages as liquor could yield an additional \$2 million to \$3 million annually for the state and helped fight underage drinking.

"Now these out-of-state corporations will have to follow the law

and pay their fair share like the rest of us," he said.

But Nebraska lawmakers could begin debate as early as this week to redefine the beverages as beer for tax purposes.

Wilber Sen. Russ Karpisek said he introduced the measure in anticipation of the court rejecting the commission's decision and classifying the drinks as liquor.

His proposal, LB 824, has won support from the beverage, grocery and convenience stores industries but was opposed by Project Extra Mile, the Omaha-based group that fights underage drinking. The Legislature's General Affairs Committee voted 8-0 to advance the measure for full legislative debate.

"That's why we put the bill in," Karpisek said of the ruling. "We wanted it just in case the ruling wasn't what we agreed with, or if there wasn't a ruling for a while."

Nebraska Court Rejects Death Row Inmate's Appeal

BY JOSH FUNK
Associated Press

OMAHA, Neb. — A Nebraska court won't consider a death row inmate's appeal raising questions about the state's new lethal injection method and how the drugs needed for it were obtained.

Michael Ryan, who was sentenced to death for cult-related killings in 1985, should have filed a different kind of motion to challenge Nebraska's execution method, according to a Richardson County District Court ruling on Thursday rejecting Ryan's appeal. The Nebraska Supreme Court had blocked Ryan's execution while the motion was pending.

"We're pleased with this ruling — it's time for defense counsel to stop wasting the court's time and money with frivolous, meritless

motions," Attorney General Jon Bruning said Friday.

Richardson County District Judge Daniel Bryan said that Ryan's challenge of the execution method couldn't be raised in a motion for post-conviction relief like Ryan filed. Instead, Bryan suggested Ryan should have based his challenge on federal civil rights laws.

Ryan's attorney, Jerry Soucie, didn't immediately respond to a phone message Friday morning. Ryan was convicted of torturing and killing James Thimm at a southeast Nebraska farm where Ryan led a cult near Rulo in 1985 and beating to death the 5-year-old son of a cult member.

When Ryan was sentenced to death, the electric chair was Nebraska's sole method of execution. But the Nebraska Supreme Court

ruled in 2008 that death via electrocution was cruel and unusual punishment and the state Legislature changed Nebraska's method to lethal injection.

Ryan's lawyer argued it was improper and unfair to change the execution method years after Ryan was sentenced in 1986. Soucie also argued Ryan's sentence should have been commuted to life in prison because Nebraska used questionable tactics to obtain sodium thiopental, a hard-to-find drug for executions.

Sodium thiopental is no longer manufactured in the United States and is in scarce supply worldwide. Soucie cited claims by a Swiss manufacturer of the drug, Naari AG, that the sodium thiopental Nebraska bought was a sample intended only to be used for evaluation purposes in Zambia.

Bruning has defended the state's purchase of the lethal injection drug as legal.

At the time of the killings near

Rulo, Ryan and about 20 cult members lived at the farm and stored weapons in preparation for a final battle between good and evil.

Ryan, known to cult members as the "King," ordered the murder of Thimm because Ryan believed he had displeased God. Over three days, Thimm was beaten, sexually abused, shot, stomped and partially skinned while still alive. His fingertips had been shot off on one hand.

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